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In The
Supreme Court Of The United States

OCTOBER TERM, 1951

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No. 1800. 86

LOCAL UNION NO. 10, UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAMFITTERS OF THE UNITED STATES AND CANADA OF THE AMERICAN FEDERATION OF LABOR, ET ALS.,

Petitioners,

v.

O. J. GRAHAM, O. T. GRAHAM AND E. M. GRAHAM, PARTNERS, TRADING AS GRAHAM BROTHERS,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO GRANTING OF WRIT OF CERTIORARI

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TABLE OF CONTENTS

Subject Index

	Page
Opinions Below	1
Jurisdiction	2
Statement of the Case	2
Argument	5
Conclusion	12

Table of Cases

American Federation of Labor v. American Sash & Door Company, 335 U. S. 538	6
Building Service Employees International Union v. Gazzam, 339 U. S. 553	7, 8
Edwards v. Commonwealth, 191 Va. 272, 60 S. E. (2d) 35	8
Giboney v. Empire Storage and Ice Co., 336 U. S. 490	7
Hughes v. Superior Court of California, 339 U. S. 460	7, 8
International Brotherhood v. Hanke, 339 U. S. 470	7, 8
International B. of E. W. v. N. L. R. B., 341 U. S. 694	9
Lincoln Federal Labor Union No. 19129 v. Northwestern Iron and Metal Company, 335 U. S. 525	6
Local 74 v. N. L. R. B., 341 U. S. 707	11
N. L. R. B. v. Denver Building and Construction Trades Council, 341 U. S. 675	10
George Whitaker v. State of North Carolina, 335 U. S. 525	6

Statutes

Sec. 40-68, Code of Virginia, 1950	5
Sec. 40-69, Code of Virginia, 1950	5
National Labor Relations Act, as amended, Secs. 8(b)(4)A and 8(c), 61 Stat. 140, 65 Stat. 601	9

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OPINIONS BELOW

There were no opinions delivered in the courts below.

JURISDICTION

No constitutional questions exist as asserted by petitioners. This will be demonstrated in the Argument.

STATEMENT OF THE CASE

Respondents, on September 25, 1950, filed a bill of complaint in the Law and Equity Court of the City of Richmond, Virginia, alleging that petitioners were picketing a construction project at the George Washington Carver School in the City of Richmond on which respondents were the general contractors; the bill further alleged that such picketing was for purposes contrary to the Right to Work Law of the State of Virginia and, therefore, illegal; and that respondents were threatened with irreparable harm and damage on account thereof. Injunctive relief and damages were sought (R. 2, 4, 5).

A temporary injunction was first issued (R. 6, 7). Then, after consideration of several hundred pages of testimony and the exhibits filed therewith, the Trial Court rendered its final decision granting a permanent injunction and awarding damages (R. 26-28). In this final decree is contained the following:

> "Upon consideration whereof, it appearing to the Court that the picketing complained of was conducted and carried on by the defendants, except for those defendants hereinafter noted, and for aims, purposes and objectives in conflict with the provisions of the Right to Work laws of the State of Virginia and, therefore illegal, that a permanent injunction is necessary to prevent irreparable harm and damage to the complainants, and that complainants have already been damaged to the extent of One Hundred and

Ninety ($190.00) Dollars, the Court doth so find;" (R. 26).

An appeal was sought from this decree by petitioners, but was denied by the Supreme Court of Appeals of Virginia (R. 35).

Petitioner, Richmond Building and Construction Trades Council and its affiliated local unions, three of which are also petitioners, as well as their business agents, share offices together in the same building (R. 197, 198, 206, 207). They work together and consider all problems on construction jobs in the Richmond area as common to the group (R. 207). For some time, the Council and its affiliates had had a policy of seeing that every construction job was 100% union (R. 319, 320). Several months prior to the picketing it had been discussed by the group of business agents (R. 313).

On July 27, 1950, a group of the business agents went to the site of the job for the admitted purpose of getting the general contractor, as well as any subcontractors, to straighten up and to say "I want to go union," and to use all union labor (R. 267, 268, 272, 295). At that time, the business agents knew that the plumbing subcontract had been let to a non-union plumbing subcontractor (R. 272, 295). In the presence of respondents' superintendent at the job site, the agents discussed putting a picket line on the project the following Monday morning because there was a non-union subcontractor working (R. 344, 346).

The next day two of these business agents, who were also officers of the Council, at their request, held a conference with O. J. Graham, one of the respondents, at his office. They told Graham that they wanted him to work all union labor on the job or suffer the consequences; that they were speaking for all trades; that the union's policy was to see

that all jobs in Richmond were 100% union; and that Graham would have to take the non-union plumbing subcontractor off the job and cancel his contract. They added that unless the job was 100% union, union labor would not work on it (R. 402, 403, 404, 418, 419). When Graham replied that such action on his part would violate the Virginia Right To Work Law, they said that no one else was paying any attention to the law and there was no reason that Graham Brothers should (R. 404, 418).

The reason for the delay between these threats and demands and the actual picketing which commenced September 25, 1950, was stated by two of the petitioners to be that the business agents who were going to carry the signs had to be out of town most of the time and it was not then convenient (R. 239, 292, 293).

The actual picketing done was peaceful in its nature. The sign read: "This is not a union job. Richmond Building Trades Council." (R. 240).

The result of the picketing was that all union labor on the job either had the information beforehand and didn't show up, or quit working, and as a consequence, work slowed to a standstill (R. 360, 361, 362).

> "The picketing began because they (*the unions*) wanted the job to be one hundred per cent union. They didn't want the non-union plumber on the job. They wanted to stop the job—picket the job to make us—force us, I will say, to do away with the non-union plumber, which the law wouldn't let us." (R. 383) (Italics Supplied).

Almost everyone agreed that the picketing would cause all union labor to stop work (R. 222, 246, 306, 323).

One of petitioners admitted that the reason for the picketing was because there was a non-union subcontractor on the job (R. 293).

ARGUMENT

The question involved is not that stated by the petitioners; it is rather one which has already been settled by recent decisions of this Honorable Court.

Petitioners state that the picketing was peaceful and solely for the purpose of publicity and conclude that to enjoin picketing under such circumstances is to deprive them of their constitutional right of free speech. This ignores the specific factual finding of the Trial Court, affirmed by the State Appellate Court, that the purpose of the picketing was illegal because contrary to the Right To Work Law of the State. That there is ample evidence to support such a finding has been demonstrated in the statement of the case.

The real question involved is whether or not a state court may properly enjoin peaceful picketing carried on for a purpose contrary to state public policy or law.

In several cases it has been decided that a state court has such power, and that unions cannot use picketing as a medium of coercion to attain an unlawful objective, and then hide behind a claimed constitutional immunity, contending that picketing is the equivalent of free speech.

Section 40-68, Code of Virginia, 1950, provides as follows:

> "It is hereby declared to be the public policy of Virginia that the right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union or labor organization."

Section 40-69, Code of Virginia, 1950, states, in addition:

> "Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for the employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against public policy and an illegal combination or conspiracy."

The constitutionality of statutes of this nature has been upheld. *Lincoln Federal Labor Union No. 19129* v. *Northwestern Iron and Metal Company*, and *George Whitaker* v. *State of North Carolina*, 335 U. S. 525; *American Federation of Labor* v. *American Sash & Door Company*, 335 U. S. 538.

It is clear that in the instant case petitioners had adopted a policy of making jobs in the Richmond area 100% union; that they demanded of respondents that this be accomplished by cancelling the contract with the non-union subcontractor, threatening them with the consequences if they failed to acquiesce in that demand; and that the actual picketing was conducted for the purpose of stopping work on the project so that respondents would be faced with the alternative of using all union labor on the project, or closing down the job.

If respondents had given in to the pressure exerted by petitioners, they would have violated the Virginia law; when they did not give in, petitioners sought to attain their unlawful objective by means of picketing.

The fact that the picketing was peaceful is not to be viewed in isolation; that it is not the equivalent of free speech, but also involves a coercive element, has been fully recognized. And when such a coercive element is tied to an

unlawful purpose, the picketing, although peaceful, is illegal and may be enjoined.

"* * * * * while picketing has an ingredient of communication, it cannot dogmatically be equated with the constitutionally protected freedom of speech."

See *International Brotherhood* v. *Hanke*, 339 U. S. 470, 474.

"Publication in a newspaper, or by distribution of circulars may convey the same information or make the same charge as do those patrolling a picket line. But the very purpose of a picket line is to exert influences and it produces consequences different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by the printed word."

See *Hughes* v. *Superior Court of California*, 339 U. S. 460, 465.

"They were exercising their economic power together with that of their allies to compel Empire to abide by union rather than by state regulation of trade."

* * * * *

"We hold that the states' power to govern in this field is paramount, and that nothing in the constitutional guarantees of speech or press compels a state to apply or not to apply its antitrade restraint law to groups of workers, businessmen or others."

See *Giboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490, 503 and 504.

In *Building Service Employees International Union* v. *Gazzam*, 339 U. S. 553, *International Brotherhood* v.

Hanke, supra, and *Hughes* v. *Superior Court of California, supra,* all involving picketing, this Honorable Court held, in effect, that if in the valid exercise of their power to rule, the States and the National Government should outlaw certain objectives, any means utilized to achieve those objectives may incidentally fall within the prohibition and may be enjoined, notwithstanding the fact that the picketing was peaceful, and might in some other contexts be entitled to constitutional protection.

The Virginia Supreme Court of Appeals reviewed these decisions in *Edwards* v. *Commonwealth,* 191 Va. 272, 60 S. E. (2d) 35, and concluded, at page 285:

> "The pattern which emerges to shape the boundaries of state action seems to be that picketing is subject to regulation by the State, either by legislation or by court action. But such regulation must have a reasonable basis in prevention of disorder, restraint of coercion, protection of life or property, or promotion of the general welfare. The instrument of state action, whether judicial process or legislative enactment, must be specifically directed to acts or conduct which overstep legal limits, and not include those which keep within the protected area of free speech."

The three decisions of this Court cited above all involved peaceful picketing for a purpose declared illegal by state statute or decision, just as was the case here. However, those decisions were also vitally important as related to the secondary boycott provisions of The National Labor Relations Act, as amended. For if peaceful picketing for an unlawful objective could not be constitutionally prevented by state law, the same would seem to follow as far as the National Government was concerned.

Three opinions in 1951 carried to a logical conclusion the doctrine of the *Gazzam, Hanke,* and *Hughes* holdings.

In *International B. of E. W. v. N. L. R. B.*, 341 U. S. 694, the Giorgi Construction Company contracted to build a dwelling in Greenwich, Connecticut. The electrical work was subcontracted to Langer and the carpentry to Deltorto. Langer had formerly been a union contractor, but on this project was using non-union electricians. While Deltorto and his union carpenters were working, a business agent of the electrical union told them that non-union electrical workers were employed though not then working, and proceeded to picket the premises, carrying a sign reading: "This job is unfair to organized labor: I. B. E. W. 501, A. F. L." Deltorto and his men thereupon quit working. Deltorto informed Giorgi, the general contractor, of what had happened. The union agent called Giorgi and told him Langer would have to be replaced in order to complete the job, and, if not, no skilled trades would perform the rest of the work. Giorgi told Langer about this, and Langer stepped out of the picture, so that the general contractor could obtain a union electrical subcontractor, which was done, and the work proceeded.

Langer filed charges with the N. L. R. B. against the union and its agent, alleging that they had induced and encouraged Deltorto's employees to refuse to work with the object of forcing Giorgi to cease doing business with Langer, in violation of the secondary boycott ban of N. L. R. A., Sec. 8(b)(4)(A). The Board issued a restraining order from which an appeal was taken.

The union contended that it was protected by Sec. 8(c), the non-coercive free speech provision of N. L. R. A. The Supreme Court held that it was sufficient that an objective of the picketing, although not necessarily the only objective, be to force the general contractor to terminate the

non-union subcontractor's incompleted contract. It said, at pp. 704-5:

> "The prohibition of inducement or encouragement of secondary pressure by §8(b)(4)(A) carries no unconstitutional abridgment of free speech. The inducement or encouragement in the instant case took the form of picketing followed by a telephone call emphasizing its purpose. The constitutionality of §8(b)(4)(A) is here questioned only as to its possible relation to the freedom of speech guaranteed by the First Amendment. This provision has been sustained by several Courts of Appeals. The substantive evil condemned by Congress in §8(b)(4) is the secondary boycott and we have recognized the constitutional right of states to proscribe picketing in furtherance of comparably unlawful objectives. There is no reason why Congress may not do likewise."

Two other cases were decided by the Court the same day upholding the secondary boycott ban. The facts were stronger in those cases than in that just described.

In *N. L. R. B.* v. *Denver Building and Construction Trades Council*, 341 U. S. 675, the union called a strike on a construction project in order to force the general contractor to terminate its contract with the only subcontractor employing non-union men. The Building and Construction Trades Council, after the subcontractor refused to go union, instructed the representative of the Council to picket the job as unfair, and each affiliate union was notified of that decision, which notice was a signal to union members to leave the job and remain away until otherwise ordered. The general contractor ordered the subcontractor off of the job and the subcontractor filed charges with N. L. R. B.

The Court pointed out that the non-union employees were employed by a subcontractor; that the only way the union

could attain its objective was to force the subcontractor off the job, which in turn could be done only by forcing the general contractor to terminate the subcontractor's contract. The result was, said the Court, that the Council's strike, in order to attain its ultimate purpose, must have included among its objects that of forcing Doose & Lintner to terminate that subcontract. On that point, the Board found that *an* object, if not the only object of what was done, was to force the subcontractor off the job. The Court accepted this crucial finding that such was an object of the strike, saying that it is not necessary that the sole object of the strike be to force the contractor to terminate the subcontract. An injunction order was held proper.

In another case decided the same day, *Local 74* v. *N. L. R. B.*, 341 U. S. 707, the union called a strike because of a non-union subcontractor on the job and claimed the right to do so because of a union rule that its members could not work on a project where non-union men were employed. It was held that the statute made such action unlawful if *an* object of doing so was to force cancellation of the subcontract. An injunction was held to have been properly entered.

These three cases involved illegal objectives under a Federal statute, but the principles adjudicated are clear. (1) If the Federal law may constitutionally proscribe picketing to force a non-union subcontractor off the job, so may a State law. And that is precisely what the Virginia Right to Work Law does. (2) If an objective, not the sole one, but one of the objectives is to get rid of the non-union men, then the picketing is illegal regardless of accompanying other objectives which might be legal standing alone.

CONCLUSION

There is no question of law in this case which has not been settled by the holdings of this Court. The findings of fact below that the picketing was for an illegal purpose are fully supported by the record. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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